

1. APPLICATION OF THESE TERMS AND CONDITIONS TO ALL PURCHASE ORDERS AND CONTRACTS

All Orders for Products and Services are subject to these Terms and Conditions, and all Orders may only be accepted in writing by Seller. Seller's initiation of performance on an Order, without written acceptance thereof, shall not constitute acceptance of the Order. Any terms and conditions in Buyer's Purchase Order, or other similar instrument, which are in addition to or are inconsistent with these *Terms and Conditions of Sale for Goods and Services*, shall not be binding and shall not apply, unless specifically agreed to in a writing by Seller. These *Terms and Conditions of Sale for Goods and Services* shall take precedence over any other terms and conditions contained in Buyer's Purchase Order or any other document.

2. QUOTATIONS AND PRICES

All quotations are subject to these Terms and Conditions and any additional terms and conditions that may appear on Seller's written Sales Quote or written Proposal. In the case of a conflict between these Terms and Conditions and Seller's written Sales Quote or Proposal, these Terms and Conditions shall prevail.

Seller's Sales Quotes, and Proposals are subject to the following:

- (a) All published prices are subject to change without notice.
- (b) UNLESS OTHERWISE SPECIFIED IN WRITING, ALL SALES QUOTES EXPIRE THIRTY (30) DAYS AFTER DATE OF ISSUE.
- (c) Budgetary quotations, ROM's and estimates are for preliminary information only and shall neither constitute offers, nor impose any obligation or liability upon Seller.

(d) Unless otherwise stated in writing by Seller, all prices quoted shall be exclusive of transportation, insurance, taxes (including, without limitation, any sales, use or similar tax), license fees, customs fees, duties and other charges related thereto, and Buyer shall report and pay any and all such shipping charges, premiums, taxes, fees, duties and other charges related thereto, and Buyer shall hold Seller harmless therefrom.

(e) Stenographical, typographical and clerical errors are subject to correction.

(f) Prices quoted are for Products only and do not include technical data, proprietary rights of any kind, patent rights, qualification, environmental or other than Seller's standard tests, and other Seller's normal domestic commercial packaging, unless expressly agreed to in writing by Seller.

(g) Published weights and dimensions are approximate only. Manuals, programs, listings, drawings or other documentation required hereunder must be referenced specifically, and will be the latest applicable version.

3. TERMS OF PAYMENT

Unless credit is granted, payment is due upon delivery. All payments for Products released and shipped or Services performed on approved credit accounts shall be due in full not later than thirty (30) days from the date of issuance of Seller's Sales Invoice, unless otherwise provided in writing by the parties. The unpaid portion of any amount not paid within thirty (30) days shall bear an interest at the annual rate of 10%, as permitted by California Law. Seller may at any time suspend performance of any Order or require payment in cash, security, or other adequate assurance satisfactory to Seller when, in Seller's opinion, the financial condition of Buyer or other grounds for insecurity warrant such action. Partial shipments will be billed as made and payments therefor are subject to the above terms. Payment shall not be withheld for delay in delivery of required documentation unless a

separate price is for the documentation is agreed to by the Parties in writing, and then only to the extent of the price stated for such undelivered documentation. Seller may cancel or delay delivery of Products in the event Buyer fails to make prompt payment as required by the Purchase Order of Contract documents, or in the event of an arrearage in Buyer's account with Seller.

4. INTERNATIONAL TRANSACTIONS

Seller will provide pricing in U.S. Dollars and Buyer shall make all payments in U.S. Dollars, unless a different arrangement is specifically agreed to in writing by the Parties.

5. DELIVERY; TRANSFER OF TITLE AND RISK OF LOSS TO THE GOODS; SHIPMENT

Seller's Delivery dates represent Seller's best estimate based on current information and may be subject to change.

Title and Risk of Loss to the Goods shall transfer from Seller to Buyer upon Delivery at "FOB Seller's Facility," unless specifically agreed to in writing by the Parties. All international shipments shall be delivered EXWORKS [INCOTERMS 2010]. Notwithstanding the foregoing, until Buyer has paid to Seller cost of the Goods and all other charges in full, Seller shall retain, and Buyer hereby grants to Seller, a security interest in the Goods delivered to Buyer. Buyer agrees to promptly execute any documents requested by Seller to document, perfect and/or protect such security interest.

Buyer may select the manner of shipment and the carrier by providing Seller with written shipping instructions at the time of placing the Purchase Order. All shipping costs and costs for insurance shall be borne by Buyer. In the absence of specific instructions, Seller reserves the right to arrange delivery as necessary and Seller will ship by the method it deems most appropriate.

6. FORCE MAJEURE

Neither party shall be liable in any way because of any delay in performance hereunder due to unforeseen circumstances or to causes beyond its control, including, without limitation, strike, lockout, riot, war, fire, act of God, accident, inability to obtain labor, delays caused by suppliers, subcontractors or by other parties, materials shortages, curtailment of or inability to obtain sufficient electrical or other energy supplies, or compliance with any governmental law, regulation or order. Prompt notice of any such delay beyond either party's control shall be given to the other party. Provided such delay is neither material nor indefinite, performance shall be deemed suspended during and extended for such time as any such circumstances or causes have been remedied, the delayed party shall continue, and the non-delayed party shall accept performance hereunder. Seller may in the absence of applicable government regulations, during any period of shortage due to circumstances beyond its control, allocate inventories and current production among its customers. In addition, in the interest of conservation of scarce materials and of the efficient utilization of high value parts and components, Seller may substitute suitable materials, including remanufactured parts and components, when in its opinion, such substitution is necessary. Such substituted materials are covered by the same warranty and are subject to the same high standards of quality control applied to other materials. As used herein, "performance" shall include, without limitation, fabrication, shipment, delivery, assembly, installation, testing and warranty repair or replacement, as applicable.

7. ACCEPTANCE

Buyer's Final Acceptance of the Goods shall be deemed upon Delivery of the Goods, unless otherwise expressly agreed to in a writing signed by Seller. Thereafter, Goods may only be returned to Seller for repair or replacement, at Seller's option, pursuant to the terms of a valid Warranty

as set forth in Paragraph 11 in these Terms and Conditions.

8. U.S. EXPORT LAW REQUIREMENTS

Performance of the Purchase Order, Contract or Subcontract may involve the use of or access to articles, technical data or software that is subject to export controls set forth in the following: 22 USC 2751-2796, the Arms Export Control Act; 22 CFR 120-130, the International Traffic in Arms Regulations [ITAR]; 50 USC 2401-2420, The Export Administration Act; and 15 CFR 768-799, Export Administration Regulations [EAR]; along with their supplemental laws and regulations collectively referred to as the "Export Laws and Regulations." Seller represents and warrants that for all ITAR controlled Goods and Services, that is a U.S. Person as that term is defined in the Export Laws and Regulations. Seller shall comply with any and all Export Laws and Regulations and any license(s) issued thereunder.

Buyer shall not grant any Foreign National personnel access to any ITAR or EAR controlled technical data, software or Defense Articles, or provide an unauthorized Defense Service utilizing Seller's technical data, as those terms are defined in the applicable Export Laws and Regulations, without the prior written consent of Seller. Any request for such information must state the intended recipient's citizenship and status under 8 USC 1101 and * USC 1324 (The Immigration and Naturalization Act), and such other information as Seller may reasonably request. No consent granted by Seller in response to Buyer's request under this Paragraph shall relieve Buyer of its obligations to comply with the provision of this Paragraph or the Export Laws and Regulations, nor shall any consent constitute a waiver of these requirements of this Paragraph, nor constitute consent for the Buyer to violate any provision of the U.S. Export Laws and Regulations.

Buyer understands that the export, re-export or re-transfer of Seller's technical data may require a

U.S. export license or other approval. Buyer will not transfer Buyer's technical data in violation of any U.S. Export Law or Regulation, including by making any exports or re-exports of Buyer's controlled technical data to the U.S. embargoed countries of North Korea, Cuba, Iran, Sudan, Syria, or to other restricted destination or parties that may be added to the restricted export list by the U.S. Government. Export compliance guidelines and classification information for Seller's technical data are available by contacting Seller. In the event Buyer breaches the U.S. Export Controls, Buyer shall furnish to Seller all information requested to establish Seller's compliance with U.S. Export Regulations.

Buyer shall indemnify and hold harmless Seller from and against any and all damages, liabilities, penalties fines, costs and expenses, including attorney's fees and costs, arising out of any claim for the Buyer's failure to comply with the requirements contained under this section or the provisions contained in the Export Laws and Regulations. Where Buyer has failed to perform in accordance with this section concerning Export Laws and Regulations, Buyer will be deemed to be in breach of the Purchase Order, Contract or Subcontract, and Seller may terminate for Default immediately.

9. ASSIGNMENTS AND TERMINATIONS

Any assignment by Buyer of any contract hereunder without the express written consent of Seller is void. Buyer shall not cancel, terminate or reschedule any order accepted by Seller except by the prior written consent of Seller. In no event shall any order be modified or canceled for any portion thereof manufactured or in the process of manufacture at the time the request for modification or cancellation is received by Seller, except upon terms satisfactory to Seller, which shall indemnify and protect Seller against all losses.

10. INTELLECTUAL PROPERTY RIGHTS

Seller's acceptance of the Purchase Order does not confer on or grant to Buyer, in any manner whatsoever, any patent, trademark, trade secret, mask work, copyright or other Intellectual Property right held by the Seller. All inventions, discoveries, copyrights, proprietary information, technical communications and records originated or prepared by Seller pursuant to Buyer's Purchase Order and/or Buyer's Statement of Work including, but not limited to, papers, reports, charts, computer programs and other documentation of improvements thereto, and including Seller's administrative communications and records shall be the Seller's exclusive property and Seller shall retain all Intellectual Property rights thereto. Intellectual Property Rights to all hardware, software, or other materials developed or otherwise obtained by Seller for the purpose of fulfilling the terms of Buyer's Purchase Order or Statement of Work, shall remain the exclusive property of the Seller. If Seller creates derivative works of existing products, Seller shall retain the Intellectual Property rights to the existing works and shall own the intellectual property rights to any derivative products. Under no circumstances shall any products or research and development provided by Seller to Buyer be considered "works for hire."

License to Use. Seller grants to Buyer a non-assignable, non-transferable, non-exclusive, royalty-free license to use patented methods and processes of Intevac to the extent necessary for Buyer to use, in the manner permitted hereunder, the Product purchased under the Agreement. This license does not extend to the use of any of Seller's patented methods or processes in products not purchased from or supplied by Seller or in Products which have been substantially altered by Buyer or any third party. Any and all such other use of Intevac's patented methods or processes is expressly not authorized. Buyer shall not disassemble any Product or use any of the

technical information for any purpose related to "reverse engineering" of any Product.

Software License. Seller grants to Buyer a personal, non-assignable, non-transferable, non-sublicensable, non-exclusive, royalty-free right to use, solely in object code form, any software provided with a Product. This grant shall be limited to use with the Product for which the software was provided. Buyer may make a single archive copy of such software, provided that any copy must contain the same copyright notice and proprietary markings as the original software. Use of software on any equipment other than that for which it was provided or any other material breach shall automatically terminate this license.

Buyer acknowledges that all software products obtained by Buyer from Seller are proprietary to Seller and its licensors and are subject to copyrights owned by Seller and its licensors. Any references to "purchases" of software products signify only the purchase of a license to use the software product in question pursuant to the terms of the Seller Software License Agreement, a copy of which is available to Buyer and which is incorporated herein in its entirety by this reference. Buyer agrees to be bound by all of the terms of such Software License Agreement and agrees that it will acquire no rights with respect to a software product other than the right to use it pursuant to the terms of such Software License Agreement.

No Other Grant of Rights. Except as set forth in this Section, the sale, lease, or other transfer of Intevac's Products to Customer does not convey any license or right, by implication, estoppel, or otherwise, to any method or process invention of any patent.

Seller's Indemnification for Seller's Intellectual Property. Seller will at its own expense and as set forth herein, defend any action brought against

Buyer in respect to any claim that the design or manufacture of any Product in the Seller's commercial line of Products or manufactured to specifications set by the Seller and furnished hereunder, constitutes an infringement of any patents or other intellectual property rights of the United States or Canada. Subject to the provisions in the DAMAGES AND LIABILITY section hereof, Seller will pay all damages and costs either awarded in a suit or paid, in Seller's sole discretion, by way of settlement, which are based on such claim of infringement, provided that Buyer promptly notifies Seller in writing of such claim of infringement and gives Seller full authority, information and assistance in settling or defending such claim, or Seller will, in its sole discretion and at its own expense, either procure a license which will protect Buyer against such claim without cost to Buyer, replace said Product with a non-infringing product, or remove said Product and refund an equitable portion of the price paid by the Buyer to Seller for said Product. Seller shall have no liability whatsoever hereunder with respect to any claims settled by Buyer without Seller's prior written consent. Seller EXPRESSLY EXCLUDES from any liability hereunder and Buyer shall hold Seller harmless from and against any expense, loss, costs, damages or liability resulting from claimed infringement of patents, trademarks, copyrights or other intellectual property rights; (1) arising from a use of or a combination of said Product with other equipment, processes, programming applications or materials not furnished under this contract, (2) based on items made with the Product furnished under this contract, (3) arising out of compliance by Seller with Buyer's designs, specifications or instructions, and/or (4) arising from use or manufacture by anyone of inventions in connection with products or services sold, used or intended for sale or use in performing contracts with the United States or related subcontracts. The foregoing states Seller's entire liability for any claim based upon or related to any alleged infringement of any patent or other intellectual property rights.

11. WARRANTY

Where Buyer has purchased a Warranty on a Standard Product, Seller warrants that Seller's Product is free of defects in materials and workmanship for such period of time ["Warranty Period"] and under such conditions as are specified in the Purchase Order, Contract or Seller's Quote. Experimental, developmental or special application products, or products with a limited life, are sold without warranty.

The warranty period shall commence upon the date of shipment from Seller's place of manufacture. Where no period of time ("Warranty Term") is stated in the Purchase Order or Contract, then such Warranty Term is limited to one (1) year. Where Buyer returns a non-working or defective unit to Seller pursuant to the terms of a valid Warranty, Seller may repair, or at Seller's option, replace the defective unit, which shall be the sole and exclusive remedy under warranty. All warranty replacement or repair of parts shall be limited to Product malfunctions which, in the sole opinion of Seller, are due or traceable to defects in original materials or workmanship.

All obligations of Seller under warranty shall cease in the event of abuse, accident, alteration, misuse or neglect of the Product. In-warranty repaired or replaced parts are warranted only for the remaining unexpired portion of the original warranty period applicable to the repaired or replaced parts. After expiration of the applicable warranty period, Buyer shall be charged at the then current prices for parts, labor and transportation. Reasonable care must be used to avoid hazards. Seller expressly disclaims responsibility for loss or damage caused by use of its products other than in accordance with proper operating procedures.

THIS WARRANTY IS EXPRESSLY IN LIEU OF AND EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR PARTICULAR PURPOSE, USE, OR

APPLICATION, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SELLER, UNLESS SUCH OTHER WARRANTIES, OBLIGATION OR LIABILITIES ARE EXPRESSLY AGREED TO IN WRITING BY SELLER.

Statements made by any person, including representatives of Seller, which are inconsistent or in conflict with the terms of these warranties shall not be binding upon Seller unless reduced to writing and approved by an officer of Seller.

12. WARRANTY REPLACEMENT AND ADJUSTMENT

All claims under warranty must be made promptly after occurrence of circumstances giving rise thereto and must be received within the applicable warranty period by Seller or its authorized representative. Such claims should include the Product type and serial numbers, and a full description of the circumstances giving rise to the claim. Before any Products are returned for repair and/or adjustment, written authorization from Seller or its authorized representative for the return and instructions as to how and where these Products should be shipped must be obtained. Any product returned to Seller for examination shall be sent prepaid via the means of transportation indicated as acceptable by Seller. Seller reserves the right to reject any warranty claim not promptly reported and any warranty claim on any item that has been altered or has been shipped by non-acceptable means of transportation. When any Product is returned for examination and inspection, of for any other reason, Buyer shall be responsible for all damage resulting from improper packing or handling, and for loss in transit, notwithstanding any defect or non-conformity in the Product. In all cases Seller has sole responsibility for determining the cause and nature of failure and Seller's determination with regard thereto shall be final. IF IT IS FOUND THAT SELLER'S PRODUCT HAS BEEN RETURNED WITHOUT CAUSE AND IS STILL SERVICEABLE, BUYER WILL BE NOTIFIED AND THE PRODUCT RETURNED AT ITS EXPENSE, IN ADDITION, A CHARGE FOR TESTING

AND EXAMINATION MAY, IN SELLER'S SOLE DISCRETION, BE MADE ON PRODUCT SO RETURNED.

13. SELLER'S LIMITATION OF LIABILITY

SELLER'S AGGREGATE LIABILITY FOR DAMAGES OR OTHERWISE SHALL NOT EXCEED THE PAYMENT, IF ANY, RECEIVED BY SELLER FOR THE UNIT OR PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED UNDER THE PURCHASE ORDER, AS THE CASE MAY BE, WHICH IS THE SUBJECT OF CLAIM OR DISPUTE. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY KIND, HOWSOEVER CAUSED.

14. TRADEMARKS

Buyer agrees that it will not use any name or trademark of Intevac, Inc. or Intevac Photonics, Inc. without prior written permission.

15. DISPUTES

All disputes under any contract concerning Products not otherwise resolved between Seller and Buyer shall be resolved in a court of competent jurisdiction in Santa Clara County, California, and in no other place. However, in Seller's sole discretion, such action may be heard in an alternate jurisdiction designated by Seller (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Buyer hereby consents to the jurisdiction of such court or courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with, the Products or services furnished by Seller, may be brought by Buyer more than one (1) year after the cause of action has accrued. If any part, provision or clause of the terms and conditions of sale, or the application thereof to any person or circumstances, is held invalid, void or unenforceable, such holding shall not affect and shall leave valid all other parts, provisions, clauses

or applications of the terms and conditions remaining, and to this end the terms and conditions shall be treated as severable.

16. GOVERNMENT SALE

For contracts placed in support of and charged to a U.S. Government Prime Contract procuring an item meeting the Federal Acquisition Regulation (FAR) definition of a commercial item, the following clauses set forth in the FAR or the Defense Federal Acquisition Regulation Supplement (DFARS) in effect as of the date of this contract are incorporated herein by reference.

- (a) Utilization of Small Business Concerns FAR 52.219-8
- (b) Equal Opportunity FAR 52.222-26
- (c) Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era FAR 52.222-35
- (d) Affirmative Action for Workers with Disabilities FAR 52.222-36
- (e) Subcontracts for Commercial Items and Commercial Components FAR 52.244-6
- (f) Preference for Privately Owned U.S. Flag Commercial Vessels FAR 52.247-64
- (g) Preference for Domestic Specialty Metals, Alternate 1 DFAR 252.225-7014
- (h) Subcontracts for Commercial Items and Commercial Components DFAR 252.244-7000
- (i) Transportation of Supplies by Sea DFAR 252.247-7023
- (j) Notification of Transportation of Supplies by Sea DFAR 252.247-702

17. ANTI-CORRUPTION REQUIREMENTS

The U.S. Foreign Corrupt Practices Act and similar anti-corruption and anti-bribery laws in other countries generally prohibit making, promising, or offering payments or gifts to governmental officials to obtain or retain business or to secure any improper business advantage. Buyer will not offer or make any payments or provide anything of value to a government official to influence an official action that awards business, retains business, or secures an improper business advantage in

connection with the products. In the event of an alleged breach of the anti-corruption obligations, the Buyer shall cooperate in good faith with Seller to determine whether an alleged breach has occurred. In such case, the Buyer shall furnish to Seller all information requested to establish compliance the required anti-corruption obligations.

18. PROTECTION OF PROPRIETARY INFORMATION

If a separate confidentiality, nondisclosure, or proprietary information agreement exists between Seller and Buyer, which relates to the subject matter of the Purchase Order, then confidential or proprietary information furnished by one party to the other party shall be protected pursuant to such agreement, and this Section shall not apply.

For purposes of this Section, "Information" shall mean information that is disclosed to Buyer by Seller, in connection with the Purchase Order of contract, which is identified by one party as being proprietary, or which is information that a reasonable person would understand to be such information. Examples of "proprietary information" include, but are not limited to, customer lists, pricing policies, market analyses, business plans or programs, software, specifications, manuals, notes, annotations, performance data, designs, drawings, processes, data reports, test reports, and photographs; and engineering, manufacturing, or technical information related to Seller's products, services, equipment or processes as well as duplicates, copies or derivative works thereof. Data and information provided by Buyer will only be considered proprietary when marked accordingly. Seller's proprietary data and information will be used by Buyer only upon Seller's written approval.

Buyer's obligations with respect to Proprietary Information disclosed between the parties, prior to the performance in full, termination of cancellation

of the Purchase Order or Contract shall not be affected.

19. WAIVER

A waiver of any of these terms and conditions contained herein shall not be deemed a continuing waiver or a waiver of all terms and conditions, but shall apply to the instance to which the waiver is directed.

20. ASSIGNMENT

Buyer shall not assign the Purchase Order or Subcontract, in whole or in part, without first obtaining the written consent of Seller, which consent shall not be unreasonably withheld.

21. SEVERABILITY

If any part, term or provision of the Agreement is held void, illegal, or unenforceable or in conflict with any laws having jurisdiction over the Agreement, the remaining portions shall remain in full force and effect. The parties agree, however, to negotiate an equitable amendment to the Agreement if a material provision is thus adversely affected.

22. INDEPENDENT CONTRACTORS.

The relationship of Customer and Intevac established by the Agreement is that of buyer and seller, and nothing contained in the Agreement shall be construed (a) to give either party the power to direct or control the day-to-day activities of the other; or (b) to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

23. OFFICIAL LANGUAGE

The English version is the official version of the Agreement. If the Agreement is translated into any other language and a conflict exists between the

translation and the English version, the English version shall control.

24. SURVIVAL

The termination of the Agreement shall not affect (a) any payment obligation that arose prior to termination or, where applicable, after termination, nor (b) **Sections 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, and 22**, each of which shall survive.